

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA

DOCKET NO. 94-736-W/S - ORDER NO. 95-871 ✓

APRIL 12, 1995

IN RE: Petition of Heater of Seabrook, Inc.	)	ORDER
for a Declaratory Ruling and Transfer	)	RULING ON
of Certificate of Convenience and	)	PETITION
Advantage.	)	

On November 28, 1994, the Town of Seabrook (the Town) petitioned the Public Service Commission of South Carolina (the Commission) for a declaratory ruling and transfer of Certificate of Convenience and Advantage from Heater of Seabrook, Inc. (Heater) to the Town. In its petition, the Town requested certain relief related to future condemnation of the utility owned and operated by Heater.

On December 29, 1994, Heater filed its Answer and a Motion to Dismiss the Petition for lack of Commission jurisdiction. Oral arguments were held on Heater's Motion to Dismiss on March 9, 1995. Heater was represented by Darra W. Cothran, Esquire; the Town of Seabrook was represented by Michael A. Molony, Esquire; the Consumer Advocate for the State of South Carolina (the Consumer Advocate) was represented by Elliott F. Elam, Jr., Esquire; and the Commission Staff was represented by F. David Butler, General Counsel.

The Town's Petition asks for extensive relief in the form of an approval of transfer of the Certificate possessed by Heater to the Town itself. The Town also requested that the Commission order Heater to transfer any and all assets necessary to the Town to ensure continuous non-interrupted water and sewer service to the citizens of the Town throughout the Town's filed condemnation proceedings. The Town asked that the Commission supervise the orderly transition of all books, records, accounts and property to the Town, and that the Commission authorize a transfer of the Certificate of Public Convenience and Advantage to the Town upon the filing of the sum set forth in the Notice of Condemnation under the Eminent Domain Procedure Act. Further, the Town requested the Commission to continue the supervision of rates and service by Heater until such time as the condemnation proceedings are completely exhausted. Heater moved to dismiss the Petition on the grounds that the Commission lacks jurisdiction to afford the relief requested in the Petition.

At the oral arguments, the Town presented a somewhat different request for relief than outlined in its actual Petition. The request for relief may be summarized in the following three points: First, the Town urges the Commission to declare that it has jurisdiction over the utility until the Town takes possession, and/or the title passes. Second, the Town requests that the Commission order Heater to produce, in an orderly fashion, all the records that it will need to operate the utility system, including accounting records, customer deposits, computer records, and keys

to the trucks that are needed for the everyday operation of the system at the time the system is taken over by the City. Third, the Town requests this Commission to declare that once the system is taken over by the City, that the Commission has no jurisdiction over the rates that may be charged to the utility's customers.

The Commission has examined these points and concludes that it may rule on all three of them.

First, it is absolutely clear that this Commission has jurisdiction over Heater until such time as the Town takes possession of the utility and/or receives title by operation of law. S.C. Code Ann. §58-3-140 states that this Commission is vested with power and jurisdiction to supervise and regulate the rates and service of every public utility in this State. Heater will continue to be a public utility until such time as it is taken over by the Town. Therefore, this Commission has no difficulty finding that we continue jurisdiction over the utility, until such time as the Town takes possession and/or the title of the utility passes to the Town by operation of law.

With regard to the second point raised by the Town, that is, that the Commission ensure an orderly transition from the utility to the Town, we find that the Eminent Domain Procedure Act is the exclusive procedure whereby condemnation may be undertaken in this State. See S.C. Code Ann. §28-2-60. If the Town indeed condemns the utility, then any such relief sought by the Town must be obtained through the Eminent Domain Procedure Act. Further, S.C. Code Ann. §58-5-30 states that:

Nothing contained in the Commission's statutes shall give the Commission any power to interfere with public utilities owned or operated by or on behalf of any municipality or their agencies.

We therefore hold that once the Town has title to the utility and/or possession, any intervention by the Commission, in order to attempt to ensure an orderly transition, would be interference with a public utility owned by a municipality. We therefore decline to take any such steps to ensure orderly transition.

The third request by the City is a request for a determination that the Commission has no jurisdiction over rates once the Town acquires the utility. Once again S.C. Code Ann. §58-5-30 governs the situation. The statute clearly prevents the Commission from regulating any utility owned by any municipality. Therefore, no rates may be set by the Commission once the municipality acquires the utility. We therefore hold that the Commission has no jurisdiction over the rates of the utility once the Town takes it over.

The Commission has examined the remainder of the Petition, and hereby denies any relief inconsistent with the holdings above. Having fully addressed the issues raised by the Town, we find no further proceedings are necessary and would be beyond the jurisdiction of this Commission. Therefore, the Petition is

DOCKET NO. 94-736-W/S - ORDER NO. 95-871  
APRIL 12, 1995  
PAGE 5

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dismissed, and this Docket is closed. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

  
Chairman

ATTEST:

  
Executive Director

(SEAL)